IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 137 of 2003-B

CRL.M.C.NO.11/2001 IN CC.48/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY

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PETITIONER:

JOSE VARGHESE, S/O. GEE VARGHESE,
PANDIKUDYIL HOUSE, VENGOOR (P.O),
KURUPAMPADY (VIA), ERNAKULAM DISTRICT.

BY ADV. SRI.K.A.SHAMSUDEEN

RESPONDENTS:

STATE OF KERALA,
REP. BY ITS DEPUTY SUPERINTENDENT OF POLICE,
CBCID, ERNAKULAM.

BY PUBLIC PROSECUTOR MR.THOMAS JOHN AMBOOKKEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.M.P. NO. 118/2003 IN CRL.M.C.NO. 137 OF 2003

DISMISSED.

17-1-2007 **SD/-K.R.UDAYABHANU,JUDGE**

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.M.C.NO.137 OF 2003

DATED THIS THE 17TH DAY OF JANUARY 2007

ORDER

The petitioner who was one of the sureties to accused No.1 in C.C.No.48/2001 in the file of the Judicial First Class Magistrate Court-I, Karunagappally has sought for setting aside the proceedings initiated against him with respect to revenue recovery for a sum of Rs.20,000/-. The petitioner has produced the proceedings paper on C.C.No.48/200 where from it can be seen that accused No.1 for whom the petitioner was the surety, appeared before the court on 18-9-2002 subsequent to the initiation of the proceedings in M.C. against the present petitioner/surety vide M.C.No. 11/2001. It is seen from the proceedings paper in M.C.11/2001 that the petitioner appeared before the court in the above proceedings on 19-11-2001 but on the prior posting date on 15-10-2001 itself distress warrant was issued against him. It is also seen from the proceedings paper in M.C.No.11/2001 that the petitioner who stood as surety did not appear before the court below thereafter. The

court had issued reminders for the execution of the distress warrant as the proceedings in the M.C. continued. Subsequent to the appearance of the accused, he approached this Court vide O.P.No.28664/2002 (Annexure-4). It can be seen from the proceedings paper of C.C.No.48/2000 that the first accused was at first remanded and granted bail on fresh sureties. This Court as per order in the above directed the petitioner/surety to apply before the court below for stalling the recovery proceedings initiated and granted an order of suspending the proceedings for recovery for two months. Subsequently the petitioner applied before the court below vide Annexures 5 and 6 applications but the court as per Annexure-7 order dismissed the same mentioning that the penalty has already been imposed on him.

2. I find that from Annexure-2 proceedings paper on M.C.No.11/01, no penalty as such has been imposed on the petitioner/surety. Even before his appearance, distress warrant was issued and the same was being pursued. Evidently, the procedure contemplated under Section 446 Cr.P.C.has not been complied with. It can also be seen that

the direction of this Court in the order in O.P.No.28660/2002 has also not been complied with.

I find that further proceedings against the petitioner/surety is liable to be set aside. In the result, the proceedings in M.C.11/2001 in C.C.No.48/2000 in the file of the Judicial First Class Magistrate Court-I, Karunagappally is herewith quashed and it is directed that the distress warrant is not to be effected hereafter. The Crl.M.C.is allowed.

Sd/-

K.R.UDAYABHANU, JUDGE

ks. **TRUE**

K.R.UDAYABHANU, J

CRL.M.C.NO.137 OF 2003-B

ORDER

17-1-2007